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SERVICE DATE – OCTOBER 24, 2022

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1305X

GREAT REDWOOD TRAIL AGENCY
—ABANDONMENT EXEMPTION—
IN MENDOCINO, TRINITY, AND HUMBOLDT COUNTIES, CAL.

Decided: October 24, 2022

On May 14, 2021, the Great Redwood Trail Agency (GRTA), formerly named North Coast Railroad Authority (NCRA)¹ filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, Cal.² After the proceeding was held in abeyance to permit the Board to resolve certain jurisdictional issues,³ the Board lifted the abeyance on May 17, 2022, and on May 20, 2022, notice of the exemption was served and published in the Federal Register (87 Fed. Reg. 31,056). The Board's notice indicated that the exemption would become effective on June 19, 2022, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) was filed by May 31, 2022.

¹ NCRA's name was changed to Great Redwood Trail Agency, effective March 1, 2022. (GRTA Letter 6, Jan. 10, 2022.) The proceeding has been recaptioned accordingly.

² Concurrently with the filing of its verified notice, GRTA filed a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.

³ GRTA's verified notice described the line sought to be abandoned as including the Arcata & Mad River subsidiary, between milepost 295.57, near Korblex, and milepost 301.8, near Korbel, a distance of approximately 6.23 miles. (Verified Notice 1 n.1.) By decision served on May 17, 2022, the Board determined that abandonment of the Arcata & Mad River subsidiary had previously been consummated, removing that segment from the Board's jurisdiction. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 3-5 (STB served May 17, 2022). Therefore, the line GRTA sought to abandon was defined to consist of 169.61 miles extending between milepost 139.5, near Willits and milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa (the Line).

On May 31, 2022, Mendocino Railway (MR) filed a notice of intent to file an OFA to purchase a 13-mile portion of the Line extending from milepost 139.5 to milepost 152.5. The filing of the notice of intent automatically stayed the effective date of the exemption until June 29, 2022, pursuant to 49 C.F.R. § 1152.27(c)(2)(i). By decision served on June 24, 2022, the Board granted a petition filed by MR to postpone the deadline for filing an OFA and further postponed the effective date of the exemption. MR subsequently filed an OFA to purchase a portion of the Line, which was rejected by a decision served on October 20, 2022. The abandonment exemption is now scheduled to become effective on October 25, 2022.

Environmental Analysis of the Proposed Abandonment

On June 8, 2021, the Board's Office of Environmental Analysis (OEA) issued for public review and comment a Draft Environmental Assessment (EA) that described the potential environmental impacts of GRTA's proposed abandonment. A Corrected Draft EA—excluding the Arcata and Mad River subsidiary from consideration—was served on May 23, 2022, recommending that eight environmental conditions be imposed on any decision granting abandonment authority.

First, pursuant to a review conducted under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, OEA stated in the Corrected Draft EA that there are historic properties within the Line's right-of-way (the Area of Potential Effect or APE) that may be eligible for listing in the National Register of Historic Places (National Register). According to OEA, however, as of the date of the Corrected Draft EA, it had not received a response from the California Office of Historic Preservation (State Historic Preservation Officer) or the Round Valley Indian Tribes of the Round Valley Reservation (Round Valley Indian Tribes or Tribal Historic Preservation Officer) regarding potential effects on historic properties and, therefore, had not been able to consider those entities' opinions before determining if the proposed abandonment could adversely affect properties within the APE that are eligible for the National Register. Thus, OEA recommended a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the APE that are eligible for listing or listed in the National Register until completion of the Section 106 process.

Second, OEA explained that the Line crosses critical habitat for tidewater goby and for threatened populations of chinook salmon and steelhead trout, and that, because chinook salmon and steelhead trout are anadromous species, their listing under the Endangered Species Act (ESA), 16 U.S.C. § 1536, is managed by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries). Because salvage activities are not planned as part of the proposed abandonment, OEA concluded that the proposed abandonment would have no effect on threatened and endangered species. However, OEA noted that, if project plans were to change and involve abandonment-related salvage, adverse impacts on threatened and endangered species could occur. Therefore, OEA recommended a condition requiring GRTA to consult with OEA, the U.S. Fish and Wildlife Service (USFWS), and NOAA Fisheries pursuant to Section 7 of the ESA prior to undertaking any abandonment-related salvage activities and prohibiting GRTA from initiating any

abandonment-related salvage activities until the Section 7 consultation process is complete and the Board has removed this condition.

Third, OEA noted that the Line crosses portions of the Humboldt Bay National Wildlife Refuge and other properties managed by the USFWS, land administered by the Bureau of Land Management (BLM), state land managed by the California Department of Fish and Wildlife (CDFW), and tribal land under the jurisdiction of the Round Valley Indian Tribes and the Bureau of Indian Affairs (BIA). Accordingly, OEA recommended a condition requiring GRTA to consult with USFWS, BLM, CDFW, BIA, and the Round Valley Indian Tribes and implementing the reasonable requirements of those agencies for any abandonment-related salvage on federal, state, and tribal lands.

Fourth, OEA stated that GRTA provided its environmental and historic report to the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (Corps) and requested comments from those agencies regarding potential impacts on water resources. As of the date of the Corrected Draft EA, those agencies had not provided comments. However, by letter dated May 18, 2021, the City Council of the City of Eureka (City of Eureka) submitted comments noting, among other things, that the deterioration of railroad infrastructure in many locations along the Line had increased flood risks and contributed to drainage problems, resulting in sediment discharge to waterways. While GRTA does not propose to undertake any salvage activities as part of the proposed abandonment, OEA stated that, if GRTA's project plans were to change and involve the removal of bridges, other in-stream work, ground disturbance, or regrading of the right-of-way, impacts on surface waters and wetlands near the Line could occur. Accordingly, OEA recommended a condition requiring GRTA to consult with USEPA, the Corps, and the California State Water Resources Control Board (SWRCB), and to comply with the reasonable requirements of those agencies prior to undertaking any abandonment-related salvage activities.

Fifth, OEA explained that GRTA identified nine sites along the Line where releases of hazardous wastes or material may have occurred. OEA further stated that the California State Transportation Agency had identified additional hazardous waste sites in the vicinity of the Line, as well as sites containing abandoned rail equipment, structures, and rail debris, which may be associated with hazardous materials. Because GRTA does not intend to undertake any abandonment-related salvage activities that could disturb hazardous waste sites or the rail right-of-way, OEA stated that it did not expect that the proposed abandonment would result in any impacts related to hazardous wastes or hazardous materials. Nevertheless, to address concerns regarding contamination within the rail right-of-way, OEA recommended a condition requiring GRTA to consult with USEPA and the California Environmental Protection Agency's Department of Toxic Substances Control to ensure that any reasonable concerns regarding hazardous waste sites and potential contamination of the right-of-way are addressed, as appropriate, if project plans were to change and involve abandonment-related salvage activities.

Sixth, OEA stated that the City of Eureka's May 18 letter also noted that the portion of the Line along the Humboldt Bay shoreline is considered critical coastal protection infrastructure, but that certain areas within that portion have suffered significant erosion and deterioration. OEA reviewed and confirmed that portions of the Line are located within the

boundaries of the California Coastal Zone. To address concerns regarding potential impacts of the proposed abandonment on coastal resources, pursuant to the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1467, and the Board's environmental regulations at 49 C.F.R. § 1105.9, OEA recommended a condition requiring GRTA to consult with the California Coastal Commission and to obtain a federal consistency determination, if necessary. The condition would require GRTA to report the results of this consultation in writing to OEA, and GRTA would be prohibited from filing a consummation notice or initiating any abandonment-related salvage activities until the Board removes the condition.

Seventh, OEA explained that GRTA requested comments from the Natural Resources Conservation Service (NRCS) regarding potential impacts of the proposed abandonment on agricultural land, but no response was received. OEA stated that, because GRTA does not propose to undertake any abandonment-related salvage activities, OEA does not expect that the proposed abandonment would have any effect on prime or unique farmland. Nevertheless, OEA recommended a condition requiring GRTA to consult with NRCS regarding impacts on prime farmland if project plans were modified to involve abandonment-related salvage activities, and to implement the reasonable recommendations of NRCS to minimize impacts on agricultural land.

Finally, OEA stated that the California Department of Transportation (Caltrans) submitted comments noting that the Line intersects U.S. Route 101 and state roadways, including state routes 36, 162, and 211, and that the lack of maintenance for railroad crossings on state highways has previously resulted in a safety liability for the motoring public. According to OEA, Caltrans submitted additional comments stating that it considered the matter of crossing repair to be outside the scope of OEA's environmental review process and clarifying that Caltrans was not requesting any conditions on the proposed abandonment. OEA noted that, because GRTA does not propose to conduct any abandonment-related salvage activities that could affect road crossings or other transportation infrastructure, OEA did not expect that the proposed abandonment would result in any impacts on transportation systems. However, OEA stated that, if project plans were to change and involve abandonment-related salvage activities, impacts related to road crossings could occur. Therefore, OEA recommended a condition requiring GRTA to consult with Caltrans prior to undertaking any abandonment-related salvage activities.

OEA issued its Final Environmental Assessment (Final EA) on June 21, 2022, indicating that numerous comments were received, including comments from GRTA, Friends of the Eel River (FOER), the City of Petaluma, the Humboldt Trails Council, Northcoast Environmental Center, 350 Humboldt, Friends of the Annie & Mary Rail Trail, the Coalition for Responsible Transportation Priorities (CRTP), Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, Mendocino Forest Products, Seeker Enterprises LLC (Seeker), the Sherwood Valley Band of Pomo Indians of California (Sherwood Valley Tribe), and the Sierra Club. According to OEA, GRTA, CRTP, Sierra Club, and FOER submitted comments stating that potential resumption of rail service on the Line would be a federal action subject to environmental review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370m-12, and requesting that OEA prepare an Environmental Impact Statement (EIS) in this proceeding. OEA notes in its Final EA, however, that any potential resumption of rail service, including any potential rehabilitation of the Line to allow for resumed rail service by

GRTA, would not be a federal action subject to NEPA or a federal undertaking subject to Section 106 because it would not involve approval or authorization from the Board.⁴ Therefore, OEA concludes that it appropriately evaluated the potential environmental impacts of the proposed abandonment only, including abandonment-related salvage activities, and, as such, the EIS process is unnecessary here. Accordingly, OEA has determined that no changes to the Corrected Draft EA are warranted in response to the comments from NCRA, CRTP, Sierra Club, and FOER.

In its Final EA, OEA also states that Seeker submitted comments requesting, among other things, that the Board not only impose the conditions recommended in the Corrected Draft EA on any decision granting abandonment authority, but also on any decision allowing interim trail use. In response, OEA articulates that, because the Board's role under the Trails Act is ministerial, trail use is not a federal action subject to NEPA or a federal undertaking subject to Section 106. See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-54 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990). Therefore, OEA asserts that no changes to the conditions recommended in the Corrected Draft EA are warranted in response to this comment from Seeker.

Lastly, OEA states that the Sherwood Valley Tribe submitted comments asserting that the Line crosses the Tribe's traditional territory surrounding, and including, the town of Willits, Cal. The Sherwood Valley Tribe requested continued consultation regarding interim trail use on the Line. OEA notes that, because interim trail use is not a federal action subject to NEPA or a federal undertaking subject to Section 106, OEA would not have a role in conducting any Section 106 consultation or tribal consultation as part of the interim trail use process. OEA states, however, if GRTA were to change its plans and seek to fully abandon the Line, OEA would complete the Section 106 process before GRTA could consummate the abandonment or conduct any abandonment-related salvage activities. Thus, to ensure that the Sherwood Valley Tribe would be included in any future Section 106 consultation related to the proposed abandonment, OEA recommends a modification to Condition 1 recommended in the Corrected Draft EA. Specifically, OEA now recommends that Condition 1 be modified to include the Sherwood Valley Tribe among the Section 106 consulting parties.

Interim Trail Use

As noted above, concurrently with the filing of its verified notice, GRTA filed a request for issuance of a NITU to establish interim trail use/rail banking on the Line under the Trails

⁴ The Board has recently reiterated that “[c]arriers do not need Board authority to repair, replace, rehabilitate, or rebuild their existing lines, and therefore can make improvements, operate additional trains and add infrastructure to such lines without environmental review even if the line has long been inactive and is in disrepair.” Application of the Nat’l Passenger R.R. Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496, slip op. at 10 (STB served Aug. 6, 2021) (and cases cited therein).

Act.⁵ Pursuant to 49 C.F.R. § 1152.29, GRTA submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Because GRTA's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. Here, because GRTA is both the owner of the Line and the trail sponsor,⁶ the negotiations that normally take place to reach a trail use agreement as contemplated under 49 C.F.R. § 1152.29 may not be needed. However, to fulfill the purpose of "ensur[ing] that the agency and the public have accurate information on the status of property where a [NITU] has been issued," Nat'l Trails Sys. Act & R.R. Rts.-of-Way, EP 702, slip op. at 9 (STB served Feb. 16, 2011), GRTA will be required, prior to the expiration of the NITU period prescribed below, to file with the Board a notice confirming that it is implementing interim trail use/rail banking on the Line (or a portion thereof) and including all the other information otherwise required under 49 C.F.R. § 1152.29(h). If GRTA does not implement interim trail use/rail banking within one year, it may fully abandon the Line, subject to any outstanding conditions. See 49 C.F.R. § 1152.29(d)(1). Any interim trail use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Public Use

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use, as a trail or other public use, under 49 U.S.C. § 10905. See Rail Abans.—Use of Rts.-of-Way as Trails, 2 I.C.C.2d at 609. Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

⁵ On May 31, 2022, the Timber Heritage Association (THA) filed a request for a NITU for an 18.5-mile portion of the right-of-way, and on June 22, 2022, Seeker late-filed a request for a NITU. GRTA did not file a response to these requests. Under the Trails Act, the trail use program is voluntary and consensual between the railroad and the trail sponsor. See 49 C.F.R. § 1152.29; Citizens Against Rails-to-Trails, 267 F.3d at 1152; Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C. Cir. 1988); Rail Abans.—Use of Rts.-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Because GRTA has not indicated its willingness to negotiate for interim trail use with THA and Seeker, the Board cannot issue a NITU with THA or Seeker as potential trail sponsors. Accordingly, THA's and Seeker's requests for a NITU will be denied. Further, because Seeker's request for a NITU is being denied on other grounds, the timeliness of its request need not be addressed.

⁶ A railroad is permitted to rail bank its own line where the railroad represents that the property is suitable for interim trail use and that it will assume financial responsibility for the line. Boot Hill & W. Ry.—Aban. Exemption—in Ford Cnty., Kan., AB 927X, slip op. at 1 n.1 (STB served Feb. 13, 2006); Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle & Pitkin Cntys., Colo., AB 547X, slip op. at 4 & n.11 (STB served Oct. 16, 1998); see also City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al. (STB served Dec. 21, 2018) (issuing NITUs to trail sponsors who were three joint owners of the subject line).

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). By letter filed on June 22, 2022, Seeker late-filed a request for the imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. Seeker, however, did not satisfy the requirements for a public use condition as it did not, among other things, identify the time period for which the condition would be effective, nor discuss any justification for the imposition of the time period requested. Accordingly, no public use condition will be imposed here. Because Seeker's request for a public use condition is being denied on other grounds, the timeliness of its request need not be addressed.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The notice served and published in the Federal Register on May 20, 2022, exempting the abandonment of the Line described above is modified to the extent necessary to permit the issuance of a NITU to GRTA to implement interim trail use/rail banking as set forth below. The abandonment is also subject to the following conditions:⁷

(a) GRTA shall retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. GRTA shall report back to OEA regarding any consultations with the California Office of Historic Preservation, the Round Valley Indian Tribes, the Sherwood Valley Tribe, and the public. GRTA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

(b) GRTA shall consult with OEA, USFWS, and NOAA Fisheries to address potential impacts on threatened and endangered species, pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. § 1536. GRTA may not initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 7 consultation process is complete and the Board has removed this condition.

⁷ If GRTA implements trail use on the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line designated for trail use for the duration of such use.

(c) GRTA shall consult with USFWS, BLM, CDFW, BIA, and the Round Valley Indian Tribes and shall implement those agencies' reasonable requirements for any abandonment-related salvage activities on land managed by those agencies.

(d) GRTA shall consult with the Corps, USEPA, and SWRCB regarding those agencies' requirements and, if applicable, shall comply with the reasonable requirements of the Corps, USEPA, and SWRCB prior to commencement of any abandonment-related salvage activities.

(e) GRTA shall consult with USEPA and the California Environmental Protection Agency's Department of Toxic Substances Control to ensure that any concerns regarding hazardous waste sites and potential contamination of the right-of-way are addressed prior to commencement of any abandonment-related salvage activities.

(f) Pursuant to the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1467, and the Board's environmental regulations at 49 C.F.R. § 1105.9, GRTA shall consult with the California Coastal Commission and obtain state coastal management consistency certification, if necessary. GRTA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to OEA and the Board has removed this condition.

(g) GRTA shall consult with NRCS regarding potential impacts on prime farmland and shall implement the reasonable recommendations of NRCS to minimize impacts from any abandonment related salvage activities on agricultural land.

(h) GRTA shall consult with Caltrans regarding Caltrans requirements for any abandonment-related salvage activities.

3. THA's request for a NITU is denied.

4. Seeker's request for a NITU is denied.

5. Seeker's request for a public use condition is denied.

6. If GRTA implements interim trail use/rail banking, it must assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case they need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

7. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the GRTA's continuing to meet their responsibilities for the right-of-way described in paragraph 6 above.

8. If GRTA implements trail use, GRTA shall notify the Board within 10 days that it has done so. See 49 C.F.R. § 1152.29(d)(2), (h).

9. If interim trail use is implemented, and subsequently GRTA intends to terminate trail use on all or any portion of the right-of-way that is designated for trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

10. If GRTA files the notice described above by October 24, 2023, interim trail use may be implemented. If it does not, GRTA may fully abandon the Line, subject to any outstanding conditions.

11. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.